

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GUSRAE KAPLAN NUSBAUM PLLC,

Index No. _____

Plaintiff,

COMPLAINT

v.

AINA LE'A, INC.

Defendant.
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Plaintiff, Gusrae Kaplan Nusbaum PLLC (“GKN” or “Plaintiff”), by and through its attorneys, Gusrae Kaplan Nusbaum PLLC, as and for its complaint against Defendant Aina Le’a, Inc. (“Aina” or “Defendant”), states as follows:

PARTIES

1. Plaintiff GKN is a New York professional limited liability company, which practices law, as a law firm, with its principal place of business located at 120 Wall Street, New York, New York 10005. Plaintiff acted as the legal counsel for Newbridge (as described below) in accordance with the Placement Agency Agreement (as described below).

2. Defendant Aina is a Delaware corporation and has its principal place of business located at 69-201 Waikoloa Beach Drive, Waikoloa, Hawaii, 96738.

3. Newbridge Securities, Corp. is a Virginia corporation (“Newbridge”), with its principal place of business located at 5200 Town Center Circle, Tower 1, Suite 306, Boca Raton, Florida, 33486. Newbridge is registered under Section 15 of the Securities Exchange Act of 1934, as amended (the “1934 Act”), as a broker/dealer and is a member of the Financial Industry Regulatory Authority (“FINRA”).

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JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and is between a citizen of a state and a citizen or subject of a foreign state.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(3), in that the Defendant Aina consented to personal jurisdiction in the Southern District of New York pursuant to Section 14 of the Placement Agency Agreement.¹

6. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

7. On or about July 8, 2015, Newbridge and Aina entered into a Placement Agency Agreement dated July 8, 2016, by and between Newbridge and Aina (the “Original Placement Agency Agreement”), as amended by that Amendment to the Placement Agency Agreement, dated as of September 1, 2015, by and between Newbridge and Aina (“Amendment No. 1”), as further amended by Amendment No. 2 to the Placement Agency Agreement, dated as of October 1, 2015 by and between Newbridge and Aina (“Amendment No. 2”) and as further amended by Amendment No. 3 to the Placement Agency Agreement, dated as of October 15, 2015, by and between Newbridge and Aina (“Amendment No. 3,” and, together with the Original Placement Agency Agreement, Amendment No. 1 and Amendment No. 2, collectively, the “Placement Agency Agreement”). The Original Placement Agency

¹ Section 14 of the Original Placement Agency Agreement provides in relevant part that:

[Aina] hereby expressly and irrevocably agree[s] that any suit or proceeding arising directly and/or indirectly pursuant to or under this Agreement shall be brought solely in a federal or state court located in the City, County and State of New York. By its execution hereof, [Aina] covenant and irrevocably submit to the in personam jurisdiction of the federal and state courts located in the City, County and State of New York...”

See the Original Placement Agency Agreement at p. 26-27.

Agreement is annexed hereto as Exhibit A, Amendment No. 1 is annexed hereto as Exhibit B, Amendment No. 2 is annexed hereto as Exhibit C and Amendment No. 3 is annexed hereto as Exhibit D.

8. Pursuant to Section 1(i) of the Placement Agency Agreement, Newbridge was engaged as the exclusive placement agent in an offering, on a best-efforts basis, to issue and sell up to an aggregate of 2,000,000 shares of common stock, par value \$0.001 per share of Aina, to investors pursuant to a public offering (the “Offering”).

9. Plaintiff was engaged by Newbridge as legal counsel to Newbridge in the Offering.

10. Pursuant to Section 1(i) of the Placement Agency Agreement, Aina was required to pay directly to Plaintiff, an advance of \$25,000 of its legal fee associated with the Offering (the “\$25,000 Advance”). Section 1(i) of the Placement Agency Agreement provides:

“Upon the execution of this Agreement, the Company shall pay directly by wire transfer in immediately available funds pursuant to wiring instructions provided to the Company by legal counsel the Placement Agent, Gusrae Kaplan Nusbaum PLLC, the Placement Agent’s legal counsel, an advance against its fee in the amount of \$25,000 (the “Advance”); and the balance of its fees, not to exceed an additional \$25,000, (plus all of such counsel’s documented costs and expenses not to exceed \$3,000 upon the initial closing of the Offering (the “Initial Closing”).

See Exhibit A, the Placement Agency Agreement at p. 2.

11. On or about July 10, 2015, Plaintiff received the \$25,000 Advance from Aina.

12. On or about July 30, 2015, Aina filed its Post-Effective Amendment No. 1 on Form S-1 to the Registration Statement (as amended, the “Registration Statement”) with the Securities Exchange Commission (the “Commission”) registering the Offering.

13. Between July 2015 and November 2015, GKN rendered legal services to Newbridge in connection with the Offering. Such services included, but are not limited to, conducting certain due diligence, drafting various items including, but not limited to, questionnaires, the Original Placement Agency Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, and portions of Aina's Registration Statement filed, as well as making various regulatory filings with, and drafting letters to FINRA, participating in numerous conference calls with, among others, Aina, Newbridge, regulators, Aina's auditors, officers and directors, employees, contractors and various legal counsels of Aina, among various other tasks. See the "Legal Bills" of Plaintiff attached hereto as Exhibit E.

14. After several extensions of the Offering, and due to various factors, on or about July 29, 2016, Aina filed a Request to Withdraw its Registration Statement on Form S-1 with the Commission, which effectively terminated the Offering.

15. According to Aina's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2016, filed with the Commission on August 15, 2016, Aina withdrew its Registration Statement "to effectively remove Newbridge as its exclusive placement agent."

16. Throughout the Offering period, upon information and belief, Robert J. Wessels ("Wessels"), President and Chief Executive Officer ("CEO") of Aina, made misstatements of fact to Newbridge and the Plaintiff and failed to disclose to Newbridge and the Plaintiff the existence of a finder's fee agreement with a FINRA broker dealer registered under the 1934 Act, which upon information and belief is of full disclosure a violation of the federal securities laws requirement.

17. As of July 30, 2016, the amount of the legal fees owed to Plaintiff, by Newbridge relating to the Offering was approximately \$ 146,000.

18. Section 9(ii) of the Placement Agency Agreement provides:

“..[if] the purchase of the Shares pursuant to the terms of this Agreement is not consummated for any reason, the Company will reimburse the Placement Agent for all actual and accountable out-of-pocket expenses (including reasonable fees and disbursements of counsel) incurred by them in connection with the Offering of the Shares...”

See Exhibit A, the Original Placement Agency Agreement at p. 25.

19. On or about August 12, 2016, Lawrence Nusbaum Esq. (“Mr. Nusbaum”), a Member of GKN, emailed Mr. Wessels, regarding payment of GKN’s monthly bills and stated he would send a follow-up email with wiring instructions. *See Exhibit F* annexed hereto.

20. On or about October 14, 2016, GKN and Newbridge entered into a Transfer and Assignment Agreement (“Transfer Agreement”) pursuant to which Newbridge assigned and transferred all of its rights, title and benefits to be reimbursed by Aina for various costs and expenses under the Placement Agency Agreement including, but not limited to reasonable fees and disbursements of counsel to Plaintiff. *See Exhibit G* annexed hereto.

21. The Placement Agency Agreement does not preclude an assignment of the contractual rights, title, or benefits of the Placement Agency Agreement. *See Exhibit A through D.*

22. On October 17, 2016, Mr. Nusbaum, sent an additional email to Mr. Wessels to advise him that Newbridge assigned the Plaintiff its rights to collect the funds owed to Newbridge under the Placement Agency Agreement, attached the invoices, and made a demand for payment, yet again. *See Exhibit H* annexed hereto.

23. On November 2, 2016, Mr. Nusbaum emailed Raymond A. Lee of the law firm Greenberg Traurig, LLP (“Mr. Lee”), Aina’s counsel to verify that the lack of response from Mr. Wessels demonstrated his refusal to pay his outstanding bill related to the Offering. See Exhibit I annexed here.

24. Aina failed and as of the date hereof and continues to fail, despite numerous requests by the Plaintiff, to pay the amounts owed to Plaintiff under the Placement Agency Agreement, which is an obligation of Aina under Section 9(ii) of the Placement Agency Agreement, and which Plaintiff has a right to collect pursuant to the Transfer Agreement.

25. To date, Aina has failed to perform its obligations under Section 9(ii) of the Placement Agency Agreement. Specifically, Aina has refused to pay first, Newbridge, and subsequent to the Transfer Agreement, the Plaintiff, the total amount due and owed for legal services performed as well as all actual and accountable out-of-pocket expenses of Newbridge relating to the Offering in the amount of \$146,000. Based on the Transfer Agreement entered into between Plaintiff and Newbridge, Plaintiff has the right to collect all such fees directly from Aina.

FIRST CAUSE OF ACTION

Breach of Contract

26. GKN repeats, reiterates and realleges each and every allegation set forth in paragraphs 1 through 21 of this Complaint.

27. The Placement Agency Agreement is a legal, valid, binding, and enforceable contract between Aina and Newbridge.

28. Aina granted Newbridge the right to be the exclusive placement agent for the Offer of Aina’s stock.

29. The Placement Agency Agreement included, pursuant to Section 9(ii), Aina would reimburse Newbridge for its legal fees regardless of whether the transactions contemplated by the Placement Agency Agreement were consummated.

30. On or around July 10, 2015 Aina made an initial payment of \$25,000 to GKN upon the execution of the Placement Agency Agreement.

31. When the Offering was terminated by Aina refused to pay any expenses to Newbridge, including reimbursement to Newbridge for the legal fees incurred by GKN.

32. Aina was liable to Newbridge for “all actual and accountable out-of-pocket expenses (including reasonable fees and disbursements of counsel) regardless of whether the Offer was successful pursuant to the Placement Agency Agreement.

33. Newbridge assigned its contractual rights, title and benefits to GKN pursuant to the Transfer Agreement.

34. Aina has breached the Placement Agency Agreement by its failure to reimburse Newbridge for legal services incurred by GKN or pay GKN for legal services rendered directly.

35. By reason of such breach of contract, Newbridge has sustained actual damages in the amount of \$146,000 plus interest and due to the Transfer Agreement GKN has the ability to collect the fees directly from Aina.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be awarded in its favor and against the Defendant as follows:

- (a) Directing Aina to pay GKN compensatory damages in an amount of \$146,000 as contemplated by the Placement Agency Agreement;

(b) Directing Aina to pay the costs in this action, including, without limitation the fees and expenses of counsel; and

(c) Granting GKN such other relief as the Court may deem just and proper.

Dated: New York, New York
March 10, 2017

Respectfully submitted,

GUSRAE KAPLAN NUSBAUM PLLC

By: 

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